porating states apply to the stock of the corporation incorporated in several states.[20]

In seeking incorporation in more than one state, therefore, a corporation seeks to become a domestic corporation in each state. The privileges and advantages which it gains thereby in each state are neither greater nor less than the corporate privileges of every corporation of that state. And so it is only reasonable to conclude that a tax on those privileges may be based on any measure that is valid as to domestic corporations not organized elsewhere. This conclusion was reached in the principal case and in the only authority previous to it on the same point.[21] There is a single *dictum* to the contrary.[22]

RECENT CASES

ATTACHMENT — SAVINGS ACCOUNT — SUBSEQUENT DIVIDENDS. — Pending the termination of his suit against members of a trade union, the plaintiff attached their savings accounts in the defendant bank. Later the depositors assigned the dividends subsequently accruing upon the deposits. Both the assignees and the plaintiff, who has secured judgment against the depositors, claim the dividends. *Held*, that the attachment lien covered the dividends. *Savings Bank of Danbury* v. *Loewe*, U. S. Sup. Ct., Oct. Term, 1916, No. 713.

An attachment only reaches effects of the debtor in the hands of the garnishee at the time of service upon the latter. Thus, wages or salary not earned or due at the time of the service of the process cannot be reached. *Coburn* v. *Hartford*, 38 Conn. 290; *Taber* v. *Nye*, 12 Pick. (Mass.) 105. See 12 HARV. L. REV. 141. But whatever binds the principal should bind that which is incident to the principal. Accordingly, an attaching creditor may recover the interest upon a

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corporate existence of appellants, considered as a corporation of this State, must spring from the legislation of this State. . . . As argued by the appellee, the only possible status of a company acting under charters from two States is that it is an association incorporated in and by each of the States, and when acting as a corporation in either of the States it acts under the authority of the charter of the State in which it is then acting . . ." Easton Bridge *v.* Metz, 32 N. J. L. 199. See Keokuk & H. Bridge Co. *v.* People, 161 Ill. 132, 43 N. E. 691.

[20] Moody *v.* Shaw, 173 Mass. 375, 53 N. E. 891; Attorney General *v.* New York, N. H. & H. R. Co., 198 Mass. 413, 84 N. E. 737; Cooley's Estate, 186 N. Y. 220, 78 N. E. 939. See Richardson *v.* Vermont & Mass. R. Co., 44 Vt. 613, 623.

[21] Lumberville Bridge Co. *v.* Assessors, 55 N. J. L. 529, 26 Atl. 711. The tax law said: "All . . . corporations incorporated under the laws of this State . . . shall pay a yearly license fee or tax of one tenth of one percent on the amount of capital stock of such corporations." At page 537, Garrison, J., said: "The franchise that is taxed as property is the privilege enjoyed by a corporation of exercising certain powers derived from the State, whereas the franchise with which we have to do is the right to exist in corporate form without reference to the powers that under such form the company may exercise. . . . The power, as in the case of the right to own and operate a railroad, is taxed as property having a true value. . . . On the other hand, the naked right of existing as a corporation is taxed . . . , not at its true value, . . . but at a sum arbitrarily imposed by the legislature as an annual fee, the amount of which is to be computed by reference to the capital of the company as a criterion."

[22] In State Treasurer *v.* Auditor General, 46 Mich. 224, 9 N. W. 258, the court held that a corporation incorporated in several states did not come within the terms of a certain tax, *because* to bring it within the terms would be to tax its property outside the jurisdiction. But this *dictum* is weakened by the fact that the court does not clearly hold that it was dealing with a franchise tax.

debt, bearing interest, unless the garnishee was prevented from paying the debt by the garnishment. *Adams* v. *Cordis*, 8 Pick. (Mass.) 260; *Woodruff* v. *Bacon*, 35 Conn. 97. It has been held that dividends declared upon attached corporate stock follow the attachment lien. *Jacobus* v. *Monongahela Nat. Bank*, 35 Fed. 395; *Norton* v. *Norton*, 43 Ohio St. 509, 525. See *Moore* v. *Gennett*, 2 Tenn. Ch. 375, 379. Yet such dividends are declared only at the discretion of the directors of the corporation. See *Gibbons* v. *Mahon*, 136 U. S. 549, 558. In the principal case, the bank was under a statutory duty to pay over a certain portion of the net income to the depositors. CONN. GEN. STAT., §§ 3440, 3441. As the debtor had a vested right to the dividends, which were as certain as interest, the creditor, who succeeds to his rights, is entitled to the dividends as well as the deposits.

BILLS AND NOTES — DEFENSES — FAILURE OF CONSIDERATION — LIABILITY OF ACCEPTOR OF BILL OF EXCHANGE. — The defendant purchased a consignment of salmon, terms "f.o.b.," payment to be made on receipt of the goods or bill of lading. The consignor drew a draft on the defendant for the purchase price and sold the draft, with the bill of lading attached, to the plaintiff bank, which forwarded the draft to its New York correspondent for collection. Defendant accepted the draft. On the day of its maturity, defendant tendered payment, but the draft and bill of lading could not be found. Later in the day defendant was notified that the documents had been found and they were tendered to him the next day. *Held*, that defendant is liable on his acceptance. *First National Bank of Seattle* v. *Gidden*, 162 N. Y. Supp. 317 (App. Div.).

The court rests its decision upon the general proposition that an acceptor is liable absolutely on his acceptance, regardless of the surrender to him of the attached bill of lading. Now it is undoubtedly well settled that failure of a pledgee to surrender collateral upon tender of payment of the debt does not discharge the debt. *Cass* v. *Higenbotam*, 100 N. Y. 248, 3 N. E. 189. See JONES, PLEDGES, 3 ed., § 543 *ff*. Where the collateral has been converted by the pledgee, the pledgor has merely a counterclaim for the value of the security or a defense *pro tanto* to the action on the debt. *Cass* v. *Higenbotam*, *supra*; *Harrell* v. *Citizens Banking Co.*, 111 Ga. 848, 36 S. E. 460. See JOYCE, DEFENSES TO COMMERCIAL PAPER, § 613. But in a situation like that in the principal case it would seem that the bill of lading is more than mere collateral. Under the contract between the buyer and seller, it is the agreed exchange for the payment of the draft. It is clear that total failure of consideration is a good defense as between the original parties to a promissory note. *Perkins* v. *Brown*, 115 Mich. 41, 72 N. W. 1095; *Wyckoff* v. *Runyon*, 33 N. J. L. 107; *Divine* v. *Divine*, 58 Barb. (N. Y.) 264. Similarly, the drawer-payee of a bill of exchange cannot recover from the acceptor where the consideration for the acceptance has totally failed. *French* v. *Gordon*, 10 Kan. 370; *Hazeltine* v. *Dunbar*, 62 Wis. 162, 22 N. W. 165. See JOYCE, DEFENSES TO COMMERCIAL PAPER, § 202. And if an indorsee of the payee takes a bill or note with notice of the failure of consideration between the payee and the obligor, he cannot recover on the instrument. *Russ Lumber & Mill Co.* v. *Muscupiable Land & Water Co.*, 120 Cal. 521, 52 Pac. 995; *Carey* v. *Nissle*, 145 Mich. 383, 108 N. W. 733. The indorsee should be in no better position where, having assumed control of the document which he knows to be the consideration for the payment of the draft, he himself causes the failure of consideration. The indorsee must then be taken to assume the seller's duties as well as his rights. *Cf. Walker* v. *Squires*, Hill & D. (N. Y.) 23; *Guaranty Trust Co.* v. *Grotian*, 114 Fed. 433. It might be urged that in any event the transfer to the buyer of the beneficial ownership of the goods is a sufficient performance of the contract to preclude a defense of entire failure of consideration. See *Linnell* v. *Leon*, 206 Mass. 71, 73, 91 N. E. 895. But in fact what the buyer contracted for was a delivery to him of the goods or the bill of